



OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 707

[No. PA-2013]

Privacy Act

AGENCY: Overseas Private Investment Corporation

ACTION: Notice of Proposed Rulemaking

SUMMARY: This rule proposes revisions to the Overseas Private Investment Corporation's ("OPIC") Privacy Act ("PA") regulations by making substantive and administrative changes.

These revisions are intended to supersede OPIC's current PA regulations, located at this Part.

The proposed rule updates the agency's address, makes administrative changes to reflect OPIC's cost, and organizes the regulations to more closely match those of other agencies for ease of reference.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments will be available for public review.

ADDRESSES: You may submit comments, identified by Docket Number PA-2013, by one of the following methods:

- E-mail: foia@opic.gov. Include docket number PA-2013 in the subject line of the message.
- Mail: Nichole Cadiente, Administrative Counsel, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527. Include docket number PA-2013 on both the envelope and the letter.

FOR FURTHER INFORMATION CONTACT: Nichole Cadiente, Administrative Counsel, (202)336-8400, or foia@opic.gov.

SUPPLEMENTARY INFORMATION: The revision of Part 707 incorporates changes to the language and structure of the regulations. Requesters are now provided more detail on the types of identity verification that may suffice for PA requests.

In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the head of OPIC has certified that this proposed rule, as promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule implements the PA, a statute concerning access to and corrections to records about an individual, and does not economically impact Federal Government relations with the private sector. Further, under the PA, agencies may recover only the direct costs of duplicating the records processes for requesters. Based on OPIC's experience, these fees are nominal.

Executive Order 12866

OPIC is exempted from the requirements of this Executive Order per the Office of Management and Budget's October 12, 1993 memorandum. Accordingly, OMB did not review this proposed rule. However this rule was generally composed with the principles stated in section 1(b) of the Executive Order in mind.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 202-05)

This proposed rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100,000,000 or more in any one

year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.)

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 22 CFR Part 70

Administrative practice and procedure, Privacy

For the reasons stated in the preamble the Overseas Private Investment Corporation proposes to revise 22 CFR Part 707 as follows:

PART 707 ACCESS TO AND SAFEGUARDING OF PERSONAL INFORMATION IN RECORDS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION

Subpart A General.

§707.11 Scope and purpose.

§707.12 Definitions.

§707.13 Preservation of records.

Subpart B Requests for access to records; amendment of records, accounting of disclosures.

Notice of court ordered disclosures.

§707.21 Requests for access to or copies of records.

§707.22 Requests to permit access of records to an individual other than the individual to whom to record pertains.

§707.23 Requests for amendment of records.

§707.24 Requests for an accounting of record disclosures.

§707.25 Appeals.

§707.26 Notification of court-ordered disclosures.

§707.27 Fees.

Subpart C Exceptions

§707.31 Specific exemptions.

§707.32 Special exemption.

§707.33 Other rights and services.

AUTHORITY: 5 U.S.C. 552a(f); Foreign Assistance Act of 1961 (22 U.S.C. 2191)F.

Subpart A General.

§707.11 Scope and purpose.

This part applies to all records in systems of records maintained by OPIC that are retrievable by an individual's name or personal identifier. The rules in this part describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, or request an accounting of disclosures of records by OPIC. These rules should be read in conjunction with the Privacy Act of 1974, 5 U.S.C. 552a, which provides additional information about records maintained on individuals.

§707.12 Definitions.

As used in this part:

(a) Individual means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) Maintain includes maintain, collect, use, or disseminate;

(c) Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the

identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph;

(d) System of records mean a group of any records under the control of OPIC from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(e) Statistical record means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. §8;

(f) Routine use means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§707.13 Preservation of records.

OPIC preserves all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. Records that are identified as responsive to a request will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the Privacy Act.

Subpart B Requests for access to records; amendment of records, accounting of disclosures.

Notice of court ordered disclosures.

§707.21 Requests for access to or copies of records.

(a) How to submit. An individual may request access to or copies of records maintained by OPIC that are retrieved by an individual's personal identifier. To make a request for records a requester must submit a written request to the Vice President of Human Resources Management either by mail or delivery to Overseas Private Investment Corporation, 1100 New York Avenue NW, Washington, DC 20527 or electronic mail to Privacy@opic.gov. The envelope or subject line should read "Privacy Act Request" to ensure proper routing. Access to records maintained by OPIC will be provided only by appointment. No officer or employee of OPIC shall provide an individual with any records under this part until a written request as described in paragraph (b) of this section is provided and the identity of the individual is verified as described in paragraph (c).

(b) Information to include. All requests under this section must:

(1) Be in writing and be signed by the requester. Unless the requester is a current officer or employee of OPIC, the letter must also be duly acknowledged before a notary public or other authorized public official or signed under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;

(2) Provide information sufficient to verify the identity of the requester, including the requester's full name, current address, date of birth, place of birth, or the system of record identification name or number. Also include a clearly legible copy of a valid form of identification. If the request is being made by a parent or guardian on behalf of another, also include the same information for the individual who is the subject of the request along with a court order, birth certificate, or similar document proving the guardianship. OPIC will review the sufficiency of identity evidence under paragraph (c) of this section;

(3) Provide information sufficient to accurately identify the records or information so that OPIC staff can locate the records with a reasonable amount of effort. At minimum this should include the full name, the system of record identification name, or the system identification number for the individual who is the subject of the records. Provision of a social security number is optional. If possible, also include a description of the records as well as providing a record creation time range and the name of the systems that should be searched. A description of OPIC's system of records can be located in the "Privacy Act Compilation" published by the National Archives and Records Administration's Office of the Federal Register. Each system of records is also published in the Federal Register;

(4) Specify whether the individual wishes access to or copies of the information pertaining to him. If access is requested, provide at least one preferred date and hour for which an appointment is requested during regular business hours as provided in paragraph (a). OPIC encourages appointments to be made at least one week in advance and for a requester to provide at least three preferred appointment times; and

(5) Include an agreement to pay fees or an agreement to pay fees up to a specified amount under §707.27. A request that does not include an agreement to pay fees will be considered an agreement to pay fees up to \$25.00.

(c) Verification of identity. Prior to providing any requested information about an individual, the Vice President of Human Resources Management shall verify the identity of the individual. If the requester is acting as the guardian of the individual who is the subject of the records, the Vice President of Human Resources Management will also verify the identity of the individual who is the subject of the records, the relationship between the requester and the subject individual, and that the requester is acting on behalf of the subject individual. In order to verify

identity, the Vice President of Human Resources Management shall require the individual to provide reasonable proof of identity such as a valid driver's license, identification card, passport, employee identification card, or any other identifying information. The Vice President of Human Resources Management shall deny any request where she determines, at her sole discretion, that the evidence offered to verify the identity of an individual is insufficient to conclusively establish the identity of the individual.

(d) Release of records. Originals and record copies will not be released from the files of OPIC. Individuals will not be permitted to disturb any record files or to remove records from designated place of examination. If copies were requested in the request letter, copies will be furnished upon payment of the fees prescribed in §707.27.

(e) Denial of request. If the Vice President of Human Resources Management declines any request submitted under this section, the denial will be made in writing and contain a brief description of the denial. Denials include a determination that an individual has not provided adequate evidence to verify identity under paragraph (c) of this section, a determination that the record cannot be located, and a withholding of a record in whole or in part. In the event of a denial, the requester may file a written appeal within thirty days of the date of notification, following the procedures in §707.25.

§707.22 Requests to permit access of records to an individual other than the individual to whom the record pertains.

(a) Access by an authorized individual. An individual requester who wishes to be accompanied by another individual when reviewing records pertaining to the requester must provide OPIC with a signed, written statement authorizing discussion of the information contained in the

records in the presence of the accompanying individual. Both parties will be required to verify their identity under §707.21(c) before access is granted.

(b) Release to an authorized individual. An individual requester who wishes to have copies of records pertaining to the requester released to another individual must provide OPIC with a written statement authorizing release of the information contained in the records to the other individual. The identity of the individual to whom the record pertains must be verified under §707.21(c) before release is authorized.

(c) Access or release to parent or guardian. Guardians will be provided access or copies under the provisions of §707.21.

§707.23 Requests for amendment of records.

(a) How to submit. Unless a record is not subject to amendment, per paragraphs (g) and (h), an individual may request an amendment of a record to correct information the individual believes is not accurate, relevant, timely, or complete. The request must be in writing, labeled "Privacy Act Request," and should be addressed to the Vice President of Human Resources Management. The request may either be mailed to OPIC or delivered to the receptionist at 1100 New York Avenue, NW, Washington, DC 20527, during regular business hours, between 8:45 a.m. and 5:30 p.m., Monday through Friday, excluding public holidays. The request will be considered received when actually delivered to or, if mailed, when it is actually received by the Vice President of Human Resources Management.

(b) Information to include. All requests under this section must:

(1) Be in writing and be signed by the requester. Unless the requester is a current officer or employee of OPIC, the letter must also be duly acknowledged before a notary public or other

authorized public official or signed under 28 USC 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;

(2) Provide information sufficient to verify the identity of the requester, including the requester's full name, current address, date of birth, place of birth, or the system of record identification name or number. Also include a clearly legible copy of a valid form of identification. If the request is being made by a parent or guardian on behalf of another, also include the same information for the individual who is the subject of the request along with a court order, birth certificate, or similar document proving the guardianship. OPIC will review the sufficiency of identity evidence under paragraph (c) of this section;

(3) Provide information sufficient to accurately identify each record so that OPIC staff can locate the record and information with a reasonable amount of effort. At minimum this should include the full name, the system of record identification name, or the system record identification number for the individual who is the subject of the records and the name for each system that you believe the record is located in. Provision of a social security number is optional. If possible, you should also include a description of the records and provide a record creation time range. A description of OPIC's systems of records can be located in the "Privacy Act Compilation" published by the National Archives and Records Administration's Office of the Federal Register. Each system of records is also published in the Federal Register;

(4) Specify the correction requested; and

(5) Detail the basis for the requester's belief that the records and information are not accurate, relevant, timely, or complete. This includes providing substantial and reliable evidence sufficient to permit OPIC to determine whether an amendment is in order.

Any request that Vice President of Human Resources Management determines does not describe records or information in enough detail to permit the staff to promptly locate the records; does not describe the correction requested in enough detail to permit the staff to make a correction; or does not reasonably specify the amendment requested or its basis will be returned without prejudice to the requester and treated as not received.

(c) Verification of identity. Prior to amending information about an individual, the Vice President of Human Resources Management shall verify the identity of the requesting individual. If the requester is acting as the guardian of the individual who is the subject of the records, the Vice President of Human Resources Management will also verify the identity of the individual who is the subject of the records, the relationship between the requester and the subject individual, and that the requester is acting on behalf of the subject individual. In order to verify identity, the Vice President of Human Resources Management shall require the individual to provide reasonable proof of identity such as a valid driver's license, identification card, passport, employee identification card, or any other identifying information. The Vice President of Human Resources Management shall deny any request where she determines, at her sole discretion, that the evidence offered to verify the identity of an individual is insufficient to conclusively establish the identity of the individual.

(d) Acknowledgment of request. If a request will take longer than ten (10) business days to process, OPIC will send the requester an acknowledgment letter.

(e) Determination. The Vice President of Human Resources Management will provide a determination on a request under this section within thirty (30) days from receipt.

(1) Amendment. The Vice President of Human Resources Management will notify the requester in writing if the amendment is made and provide the individual an opportunity to request a copy of the amended record.

(2) Denial. The Vice President of Human Resources Management will notify the requester in writing if she denies any portion of a request made under this section. The denial will include a brief explanation of the reason for the refusal and the right of the individual to file an appeal within thirty (30) days, following the procedures in §707.25. In the event an appeal is denied, a requester may file a statement of disagreement with OPIC as described in §707.25(c).

(f) Notification of amendment. Within thirty (30) days of the amendment or correction of a record or the filing of a statement of disagreement, OPIC will notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made. If an individual has filed a statement of disagreement, OPIC will attach a copy of it to the disputed record whenever the record is disclosed in the future and may also attach a concise statement of its reasons for denying the request to amend or correct.

(g) Records not subject to amendment. The following records are not subject to amendment:

- (1) Transcripts of testimony given under oath or written statements made under oath;
- (2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;
- (3) Presentence records that originated with the courts; and
- (4) Records in systems of records that have been exempted from amendment and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k) or by notice published in the FEDERAL REGISTER.

(h) No amendment permitted. No part of these rules shall be construed to permit:

(1) The alteration of evidence presented in the course of judicial, quasi-judicial, or quasi-legislative proceedings;

(2) Collateral attack upon any matter which has been the subject of judicial or quasi-judicial action; or

(3) An amendment or correction which would be in violation of an existing statute, executive order, or regulation.

§707.24 Requests for an accounting of record disclosures.

(a) How to submit. Unless an accounting of disclosures is not required to be kept under paragraph (e) of this section, an individual may request an accounting of all disclosures OPIC has made of a record, maintained in a system of records and about the individual, to another person, organization, or agency. The request must be in writing, labeled "Privacy Act Request," and should be addressed to the Vice President of Human Resources Management. The request may either be mailed to OPIC or delivered to the receptionist at 1100 New York Avenue, NW, Washington, DC 20527, during regular business hours, between 8:45 a.m. and 5:30 p.m., Monday through Friday, excluding public holidays. The request will be considered received when actually delivered to or, if mailed, when it is actually received by the Vice President of Human Resources Management.

(b) Information to include. All requests under this section must:

(1) Be in writing and be signed by the requester. Unless the requester is a current officer or employee of OPIC, the letter must also be duly acknowledged before a notary public or other

authorized public official or signed under 28 USC 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;

(2) Provide information sufficient to verify the identity of the requester, including the requester's full name, current address, date of birth, place of birth, or the system of record identification name or number. Also include a clearly legible copy of a valid form of identification. If the request is being made by a parent or guardian on behalf of another, also include the same information for the individual who is the subject of the request along with a court order, birth certificate, or similar document proving the guardianship. OPIC will review the sufficiency of identity evidence under paragraph (c) of this section;

(3) Provide information sufficient to accurately identify the records or information so that OPIC staff can locate the records with a reasonable amount of effort. At minimum this should include the full name, the system of record identification name, or the system record identification number for the individual who is the subject of the records and the name for each system that you believe the record is located in. Provision of a social security number is optional. If possible, you should also include a description of the records and provide a time range. A description of OPIC's system of records can be located in the "Privacy Act Compilation" published by the National Archives and Records Administration's Office of the Federal Register. Each system of records is also published in the Federal Register;

(4) Include an agreement to pay fees or an agreement to pay fees up to a specified amount under § 707.27. A request that does not include an agreement to pay fees will be considered an agreement to pay fees up to \$25.00.

(c) Verification of identity. Prior to providing any requested information about an individual, the Vice President of Human Resources Management shall verify the identity of the requesting

individual. If the requester is acting as the guardian of the individual who is the subject of the records, the Vice President of Human Resources Management will also verify the identity of the individual who is the subject of the records, the relationship between the requester and the subject individual, and that the requester is acting on behalf of the subject individual. In order to verify identity, the Vice President of Human Resources Management shall require the individual to provide reasonable proof of identity such as a valid driver's license, identification card, passport, employee identification card, or any other identifying information. The Vice President of Human Resources Management shall deny any request where she determines, at her sole discretion, that the evidence offered to verify the identity of an individual is insufficient to conclusively establish the identity of the individual.

(d) **Determination.** The Vice President of Human Resources Management will provide a requester with one of the following:

(1) Provision of accounting of disclosures. If the request is granted, the Vice President of Human Resources Management will provide the individual with an accounting containing the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made.

(2) Denial. The Vice President of Human Resources Management will notify the individual in writing if she denies any portion of a request made under this section. The denial will include a brief explanation of the reason for the refusal and the right of the individual to request a review thereof under the provisions of §707.25.

(e) Disclosures where an accounting of disclosures is not required.

OPIC need not provide an accounting of disclosures where:

(1) The disclosures are of the type for which accountings are not kept. For example, disclosures made to employees within the agency; or

(2) The disclosure was made in response to a written request from a law enforcement agency for authorized law enforcement purposes.

§707.25 Appeals.

An individual may appeal a denial made under §707.21-707.23 within thirty (30) days of the notification of such denial.

(a) How to submit. The appeal must be in writing, labeled “Privacy Act Appeal,” and should be addressed to the Executive Vice President. The request may either be mailed to OPIC or delivered to the receptionist at 1100 New York Avenue, NW, Washington, DC 20527, during regular business hours, between 8:45 a.m. and 5:30 p.m., Monday through Friday, excluding public holidays.

(b) Information to include. All requests under this section must:

(1) Be in writing and be signed by the requester;

(2) Be clearly labeled “PRIVACY ACT APPEAL” on both the letter and the envelope;

(3) Clearly reference the determination being appealed; and

(4) Provide support for your information, including documentation provided in the initial determination and any additional information.

(b) Appeal determination. The Executive Vice President will advise the individual of OPIC’s determination within thirty (30) business days. If the Executive Vice President is unable to

provide a determination within thirty business days, the individual will be advised in writing of the reason before the expiry of the thirty business days.

(1) Overtake initial determination. If the Executive Vice President grants the appeal and overrules the initial determination in whole or part, the individual will be notified in writing and the requested action taken promptly along with any other steps OPIC would have taken had the initial determination come to the same result as the appeal.

(2) Uphold initial determination. If the Executive Vice President denies the appeal and upholds the initial determination in whole or in part, the individual will be notified in writing and provided with an explanation. In cases where a denial of amendment or correction is upheld, the individual will also be notified of the ability to file a statement of disagreement under paragraph (c) of this section.

(c) Statement of disagreement. If an individual is denied a request to amend a record in whole or in part and that denial is upheld on appeal, the individual may file a statement of disagreement. Statements of disagreement must be concise, clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. The statement of disagreement will be placed in the system of records that contains the disputed record and the record will be marked to indicate that a statement of disagreement has been filed. The statement of disagreement will be attached to any future releases of the disputed record and may be accompanied by a concise statement from OPIC explaining its denial.

§707.26 Notification of court-ordered disclosures.

(a) Except in cases under subparagraph (c) of this section, when a record pertaining to an individual is required to be disclosed by court order, OPIC will make reasonable efforts to provide notice of this to the individual. If OPIC cannot locate the individual, notice will be deemed sufficient for this part if it is mailed to the individual's last known address. The notice will contain a copy of the order and a description of the information disclosed.

(b) Notice will be given within a reasonable time after OPIC's receipt of the order, unless the order is not a matter of public record. In those cases, the notice will be given only after the order becomes public.

(c) Notice is not required if disclosure is made from an exempt system of records.

§707.27 Fees.

(1) The fees to be charged for making copies of any records provided to an individual under this part are fifteen (15) cents per page. No fees will be charged for search or review.

(2) At its discretion, OPIC may grant a request for special services such as mailing copies by means other than first class mail or providing document certification. All special services provided to the requester will be provided at cost.

(3) OPIC considers any request under the Privacy Act to be an authorization to incur up to \$25.00 in fees unless a request states otherwise.

(4) OPIC may condition access to records or copies of records upon full payment of any fees due.

(5) All payments under this part must be in the form of a check or bank draft denominated in U.S. currency. Checks should be made payable to the order of the United States Treasury and mailed or hand delivered to OPIC at 1100 New York Avenue, NW, Washington D.C. 20527.

Subpart C Exceptions

§ 707.31 Specific exemptions.

The provisions of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f) shall not apply to any system of records maintained by OPIC that is--

- (a) Subject to the provisions of 5 U.S.C. 552(b)(1);
- (b) Composed of Investigatory material compiled for law enforcement purposes other than those specified in 5 U.S.C. 552a (j)(2);
- (c) Required by statute to be maintained and used solely as statistical records;
- (d) Composed of investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, military service, Federal contracts or access to classified information, but only to the extent that OPIC may determine, in its sole discretion, that the disclosure of such material would reveal the identity of the source who, subsequent to September 27, 1975, furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to such date, under an implied promise to such effect; and
- (e) Composed of testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service and OPIC determines, in its

sole discretion, that disclosure of such materials would compromise the fairness of the testing or examination process.

§707.32 Special Exemption.

Nothing in this part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

§707.33. Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs

November 22, 2013

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